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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,601

08/22/2003

Felix Paul Jaecklin

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07/01/2011

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EXAMINER

CAJILIG, CHRISTINE T

ART UNIT

PAPER NUMBER

3633

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/645,601	<b>Applicant(s)</b> JAECKLIN, FELIX PAUL	
	<b>Examiner</b> CHRISTINE T. CAJILIG	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 45-53 is/are pending in the application.
- 4a) Of the above claim(s) 49 and 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-48 and 51-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/11/11 has been entered.

### ***Election/Restrictions***

Claims 49 and 50 (directed to the species of the block of Figure 5) are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species 2a, 4a, 6a, or 8a, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 6/04/07.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "sheets [that] include openings overlying interconnecting tie rods" as recited in claim 53 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

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replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities:

(1) The first 3 pages of the specification references claim 1, 9, and 13. However, these claims have been cancelled.

(2) The last sentence of the paragraph bridging pages 4 and 5 ends with a typo, "????."

Appropriate correction is required.

### ***Claim Objections***

Claim 46 is objected to because of the following informalities: the claim contains a typographical error in stating that the components are "fanned" of concrete. The claim should be corrected to recite "formed." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 51 and 53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 51 states that the filler material "includes a bonding agent." However, the originally filed specification does not provide support for such new language. To the contrary, the specification states that the filler material is "bonding-agent-free," i.e. it does not have a bonding agent. See pages 1, 4, and 5. Moreover, there is no support for the language in claim 53 that the planer sheets disposed between ties have openings overlying interconnecting tie rods. The specification does not describe such a structure nor does the drawing show such a structure.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 45-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 45 states that granular filler material is disposed between "said components." However, the preceding language in claim 45 recites both "support components" and "anchor components." Therefore, it is unclear as to exactly which "component," anchoring or support, the phrase "said component" refers back.

Claim 46 states that "said components" are formed of concrete. However, the preceding language in claim 45 recites both "support components" and "anchor components." Therefore, it is unclear as to exactly which "component," anchoring or support, the phrase "said component" refers back.

Claim 52 states that planar sheets are disposed between "said ties." However, such phrase lacks antecedent basis. It is unclear whether the ties are a new element or refers back to the tie rods in claim 45.

Claim 53 recites that the sheets overlying "interconnecting tie rods." It is unclear if the "tie rods" are the same as the "tie rods" set forth in claim 45 or if claim 53 is attempting to define yet another set of tie rods which are interconnecting.

Claims 44, 48, and 51 are also rejected as a result of their dependency from claim 45.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,427,417 to Sagy ("Sagy") in view of U.S. Patent No. 4,126,001 to Shimada et al. ("Shimada").**

Regarding claim 45, Sagy discloses a structure comprising: a retaining wall (see FIG. 8) including a plurality of support components 32 stacked in tiers; at least two of said tiers including an anchor component 2 spaced from a support component, interconnected by force transmitting rigid tie rods 34; and a granular filler material (Col 3, Ln 30-36) disposed between said anchor or support components, wherein each of said rods is pivotally connected at each end thereof to one of said support and anchor components. The rods are pivotally connected because the rods are passed through only one opening in the anchor component 2 which would inherently act as a pivot.

Sagy does not disclose that there are at least two components for each tier, wherein the anchor components are spaced from each other.

Shimada discloses that each tier of anchor components 1 can comprise of at least two anchor components that are spaced from each other.

It would have been obvious to a person having ordinary skill in the art at the time of the applicant's invention to duplicate the anchor components such that there are at

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least two anchor components spaced and connected to each other as taught by Shimada to predictably increase resistance to draw-out forces (see for example Col 1, Ln 56-59 of Shimada).

Regarding claim 46, Sagy modified by Shimada does not disclose that said anchor or support components are formed of concrete. It would have been obvious to one having ordinary skill in the art at the time of invention to use concrete, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Concrete provides an easily moldable, rigid material.

Regarding claim 47, Sagy modified by Shimada further discloses that said anchor components are provided with T-shaped cross-sectional configurations. See FIG. 2 and 8.

Regarding claim 48, Sagy modified by Shimada further discloses that said tie rods are pivotally connected to interim portions 60 of said anchor components.

**Claims 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sagy in view of Shimada as applied to claim 45 above, and further in view of U.S. Patent No. 4,068,482 to Hilfiker.**

Regarding claim 51, Sagy modified by Shimada does not disclose that said filler material includes a bonding agent.



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Hilfiker discloses that bonding agent 88 in a filler is placed between tiers of components. See Col 4, Ln 57 to Col 5, Ln 5.

It would have been obvious to a person having ordinary skill in the art at the time of the applicant's invention to modify Sagy to include a bonding agent in the filler material as taught by Hilfiker to provide the predictable result of increasing bond between the soil and the retaining wall structure.

Regarding claim 52, Sagy modified by Shimada does not disclose planar sheets disposed between tie rods.

Hilfiker discloses planar sheets 88 disposed between stacked tie rods. See Col 4, Ln 57 to Col 5, Ln 5.

It would have been obvious to a person having ordinary skill in the art at the time of the applicant's invention to modify Sagy to include planar sheets disposed between stacked tie rods as taught by Hilfiker to provide the predictable result of increasing bond between the soil and the retaining wall structure.

Regarding claim 53, Sagy modified by Shimada and Hilfiker further discloses that said sheets include openings (formed from the mesh configuration of mat 88) overlying the stacked tie rods.

### ***Response to Arguments***

Applicant's arguments with respect to claims 45-53 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,350,256 to Hammer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE T. CAJILIG whose telephone number is (571)272-8143. The examiner can normally be reached on Monday-Friday, 9 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTINE T CAJILIG/  
Examiner, Art Unit 3633